

PT 99-16

Tax Type: PROPERTY TAX
Issue: Charitable Ownership/Use

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS

THE CHICAGO METROPOLITAN AREA
CHAPTER OF THE NATIONAL
ORGANIZATION OF BLACK
LAW ENFORCEMENT EXECUTIVES,
APPLICANT

v.

ILLINOIS DEPARTMENT
OF REVENUE

No: 98-PT-0020

Real Estate Tax Exemption
For 1995 Tax Year

P.I.N.: 25-21-108-040

Cook County Parcel

Robert C. Rymek
Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

SYNOPSIS: At issue is whether Cook County Parcel Index Number 25-21-108-040 (hereinafter the “subject property” or “subject parcel”) should be exempt from 1995 real estate taxes under section 15-65 of the Property Tax Code¹ which exempts all property owned by “institutions of public charity” when such property is “actually and exclusively used for charitable or beneficent purposes[.]” 35 ILCS 200/15-65.

This controversy arose as follows:

¹ In People ex rel. Bracher v. Salvation Army, 305 Ill. 545 (1922), our supreme court held property tax exemption issues necessarily depend on the statutory provisions in force during the time for which the exemption is claimed. This applicant seeks exemption from 1995 real estate taxes. Therefore, the applicable provisions are those in the Property Tax Code (35 ILCS 200/1 *et seq.*).

The applicant filed a Property Tax Exemption Complaint with the Cook County Board of (Tax) Appeals on March 22, 1996, seeking a property tax exemption for the subject property for the 1995 tax year. On May 30, 1996, the Board recommended that the exemption be denied. On December 19, 1996, the Illinois Department of Revenue (hereinafter the “Department”) denied the exemption request concluding that the subject property was not in exempt ownership and was not in exempt use. The applicant filed a timely appeal from the Department’s denial of exemption. On November 2, 1998, a formal administrative hearing was held at which evidence was presented. Following a careful review of all the evidence it is recommended that the subject parcel not be exempted 1995 real estate taxes.

FINDINGS OF FACT

1. Dept. Gr. Ex. No. 1 and Dept. Ex. No. 2 establish the Department’s jurisdiction over this matter and its position that the subject property was not in exempt use or ownership.
2. The subject property consists of a 106 foot by 75 foot lot located at 11223 South Halsted in Chicago. Dept. Gr. Ex. No. 1, Doc. A; Tr. p. 13.
3. The parcel is improved with a single story building. Dept. Gr. Ex. No. 1, Doc. A.
4. The applicant acquired the subject property via a trust deed dated October 24, 1995. App. Ex. No. 2; Tr. p. 12.
5. The applicant was organized under the General Not for Profit Corporation Act of Illinois. App. Ex. No. 1.

6. On March 20, 1996, the applicant's articles of incorporation were amended: (1) to provide for a waiver or reduction of membership dues upon a showing of an inability to pay; and (2) to set forth the following mission statement: "Develop communication techniques which will sensitize and inform the community and the criminal justice agencies regarding the problems of culturally diverse communities and the criminal justice system." App. Ex. No. 1.
7. In 1995, the applicant had net income of \$11,009 (not including \$3,305 in membership dues). Approximately 80% of this income came from dinner dances. App. Ex. No.4.
8. In 1995 applicant's gross expenses were \$15,356 with over two-thirds of these expenses being occupancy expenses. App. Ex. No. 4.
9. The subject property is used for organizational meetings, sub-committee meetings, community organization meetings, training, public polling, and strategic planning sessions concerning methods and programs for crime reduction. Dept. Gr. Ex. No. 1, Doc. A; Tr. pp. 15,
10. Among the community organizations using the subject property are: block clubs, senior citizens, the Parent Teacher Association, the Minority Golf Association, Chicago Alternative Policing Strategies, and the Board of Elections. Tr. pp. 15-17.
11. The applicant does not charge the community organizations for use of the building. Tr. pp. 15-16.

12. The applicant had a cooperative program with Governors State University wherein the applicant would monitor criminal justice internship students and Governors State University would compensate the applicant with funds the applicant would then use for inner city scholarships. Tr. pp. 17-18.
13. The applicant acted in cooperation with Rush-Presbyterian-St. Luke's Hospital to provide free screenings for kidney and hypertension disease. Tr. pp. 18-19.

CONCLUSIONS OF LAW

An examination of the record establishes that the applicant has not demonstrated by the presentation of testimony, exhibits, and argument, evidence sufficient to warrant an exemption from property taxes for the 1995 tax year. Accordingly, under the reasoning given below, the determination by the Department that the subject property did not qualify for exemption should be affirmed. In support thereof, I make the following conclusions:

Article IX, section 6 of the Illinois Constitution of 1970 limits the General Assembly's power to exempt property from taxation as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

The General Assembly may not broaden or enlarge the tax exemptions permitted by the constitution or grant exemptions other than those authorized by the constitution. Board of Certified Safety Professionals v. Johnson, 112 Ill. 2d 542 (1986). Furthermore, article

IX, section 6 does not, in and of itself, grant any exemptions. Rather, it merely authorizes the General Assembly to confer tax exemptions within the limitations imposed by the constitution. Locust Grove Cemetery v. Rose, 16 Ill. 2d 132 (1959). Thus, the General Assembly is not constitutionally required to exempt any property from taxation and may place restrictions or limitations on those exemptions it chooses to grant. Village of Oak Park v. Rosewell, 115 Ill. App. 3d 497 (1st Dist. 1983).

In accordance with its constitutional authority, the General Assembly enacted section 15-65 of the Property Tax Code, which exempts all property of “institutions of public charity” when such property is “actually and exclusively used for charitable or beneficent purposes” (35 ILCS 200/15-65 (1994)). In the case at hand, the applicant contends that the subject property should be exempt because the applicant: (1) owned the subject property; (2) is an institution of public charity; and (3) actually and exclusively² used the subject property for charitable purposes.

The taxpayer bears the burden of proving, by “clear and convincing” evidence, that the exemption applies. Evangelical Hospitals Corp. v. Department of Revenue, 223 Ill. App. 3d 225, 231 (2nd Dist. 1991). Moreover, it is well established that there is a presumption against exemption and that therefore, “exemptions are to be strictly construed” with any doubts concerning the applicability of the exemptions “resolved in favor of taxation.” Van’s Material Co. Inc. v. Department of Revenue, 131 Ill. 2d 196 (1989).

² The word “exclusively,” when used in tax exemption statutes means “the primary purpose for which property is used and not any secondary or incidental purpose.” Gas Research Institute v. Dep’t of Revenue, 154 Ill. App. 3d 430 (1st Dist. 1987); Pontiac Lodge No. 294, A.F. & A.M. v. Dep’t of Revenue, 243 Ill. App. 3d 186 (4th Dist. 1993).

Here, the applicant's ownership of the subject property was adequately established by the entry into evidence of the trust deed dated October 24, 1995. App. Ex. No. 2. Accordingly, any exemption would be limited to that 19% of the year, from October 24, 1995 through December 31, 1995, during which the applicant owned the property. However, for reasons which follow, I conclude that the applicant has failed to establish by clear and convincing evidence that it qualifies as an institution of public charity and that the subject property was used exclusively for charitable purposes. Thus, despite the fact that applicant owned the subject property for part of the tax year in question, no exemption should be granted.

In considering whether an applicant is an institution of public charity, the first consideration is generally the applicant's organizational documents. See Rotary International v. Paschen, 14 Ill. 2d 480, (1958). Here, the applicant presented a version of its constitution that was adopted *effective January 1, 1996* and a March 20, 1996 amendment. App. Ex. No. 1. However, the applicant failed to present evidence regarding the applicant's organizational documents *as they existed in 1995*, the tax year at issue. Without a copy of the applicant's organizational documents as they existed in the tax year at issue, I must resolve all doubts in favor of taxation and conclude that the applicant was not an institution of public charity.

This conclusion is supported by the fact that the March 20, 1996 amendment to the applicant's constitution provided for the waiver or reduction of membership dues upon a determination of an inability to pay. The adoption of this provision in 1996 strongly suggests that prior to 1996, the applicant was not an institution of public charity because it did not have provisions allowing the waiver of membership dues. See

Methodist Old Peoples Home v. Korzen, 39 Ill. 2d 149, 157 (1968) (institutions of public charity do not “place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits it dispenses”).

The conclusion that the applicant is not an institution of public charity is further supported by the fact that the applicant’s financial records reveal the applicant’s funds come primarily from dinner dances. App. Ex. No. 4. The applicant failed to offer any testimony regarding the nature of these dances. In the absence of evidence that these dances were charitable in nature, I conclude that the applicant was not an institution of public charity. See Methodist Old Peoples Home *supra* at 157 (institutions of public charity “derive their funds mainly from public and private charity”).

Even if the applicant had presented clear and convincing evidence that it was an institution of public charity, the subject property would still not be entitled to exemption because the applicant failed to establish the subject property was used *primarily* for charitable purposes. Although the applicant set forth a number of charitable activities it engages in and offered testimony showing that other community organizations are allowed to use the subject property free of charge, the applicant failed to establish that the subject property was used for charitable purposes more often than it was used for non-charitable purposes. In this regard, I note that there was no specific testimony regarding how often in 1995 the subject property was used for the applicant’s organizational meetings or social events as opposed to purely charitable uses.

In conclusion, as previously noted, any doubts concerning the applicability of exemptions are to be resolved in favor of taxation. Van’s Material Co. Inc., *supra*. In this case, the applicant undoubtedly engages in some charitable activities and is a positive force

in its community. Nevertheless, under the facts presented there remain numerous doubts as to whether, in 1995, the applicant was a charitable organization and whether the subject property was used primarily for charitable purposes. Accordingly, I conclude that the subject property is not entitled to exemption.

WHEREFORE, for the reasons set forth above, I recommend that Cook County Parcel Index Number 25-21-108-040 be denied exemption for the 1995 tax year.

Date _____

Robert C. Rymek
Administrative Law Judge